IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 239 OF 1989

The State of Maharashtra ...Appellant

V/s

Begam Sita Mohammad Pathan,
Aged 27 yrs, R/o. Shaniwar
Peth, Pune. ...Respondent.
(Orig. Accused.)

Mr. A.M. Shringarpure, APP for the appellant - State.

None for the Respondent.

CORAM: V.M.KANADE,J.

DATE: 13th September, 2004

ORAL JUDGMENT:

1. Heard the learned APP appearing on behalf of the appellant - State.

2. Appellant - State is challenging the judgment and order passed by the Additional Sessions Judge, Satara in Sessions Case No.30 of 1998 whereby the respondent - accused was acquitted of the offence punishable under section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and under section 66(1)(b) of the Bombay Prohibition Act.

3. Prosecution's case is that the P.S.I. Bhurewar received information that the accused was dealing in narcotic drugs in contravention of the provisions of

the Act. He had, therefore, given written report to his Superior Officer and obtained a requisite report and sanction for carrying out the raid. The raiding party accordingly raided the room of the accused and contraband drug i.e. powder of heroin of 1 gram and 250 ml. gram was found in the house of the accused. Investigation was carried out and the charge was framed by the Sessions Court.

4. Prosecution examined six witnesses. P.W.1 - Mugutrao Jadhav and P.W. 2 - Dashrath Mane were panch witnesses in respect of seizure panchanama. P.W. 3 - P.C Raskar was a constable in the raiding party who had accompanied P.S.I. Bhurewar - P.W.5. Prosecution also examined the Police Constable P.W. 3 - R.C. Raskar and Police Constable P.W. 4 - Arun Pawar.

5. The Trial Court observed that the panchas did not support the case of the prosecution. The Trial Court, however, observed that the provisions of Special Act viz. the N.D.P.S. Act were not followed. The Trial Court has observed that as per the provisions of sub-section 2 of Section 4 of the Code of Criminal Procedure, the Special Act shall prevail and all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with

according to the same provisions. In the instant case, it is an admitted position that P.S.I. Bhurewar was neither a Police Officer who was empowered to investigate the said offence nor were any powers delegated to him to initiate an action under the Act. The Trial Court came to the conclusion that P.S.I. Bhurewar not being an Officer authorized by any Officer of the State Government, he could not have validly investigated the offence under the Act. The Trial Court further held that provisions of section 51 as also provisions of sections 41, 42 and 43 of the N.D.P.S. Act had not been followed. I have, therefore, no hesitation in holding that there is no infirmity in the Judgment and Order passed by the Trial Court. The findings given by the Trial Court are not perverse. Appeal against acquittal is, therefore, dismissed. Findings of the Trial Court are confirmed.

6. Appeal is disposed of accordingly.

V.M. KANADE, J.